

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7846 OF 2004

M/s.C.V.Shah and A.V.Bhat,
Age 55 years, Now known as
M/s.Shah Promoters and Developers
through its Partner
Shri Sanjay Chandrakant Shah,
having office at AST-1, Success
Chambers, 1232, Apte Road Corner,
Deccan Gymkhana, Pune-411004.

.. Petitioner

v/s.

1. The State of Maharashtra
through its Secretary to the
Ministry of Urban Development
Department, having office at
Mantralaya, Mumbai 400 032.
2. The Director of Town Planning,
Maharashtra State, Pune.
3. The S.L.A.O. No.15, Tilak Road,
Pune 411 030.
4. The Municipal Corporation of
City of Pune, through its
Commissioner having office at
P.M.C.Bldg. Shivaji Nagar,
Pune.
5. Poona Timber Small Scale
Industrial Association,
through its Secretary.
6. The Poona Timber Merchants and
Saw Mill Owners Association,
through its Secretary.
7. The Poona Timber Small Scale .. Respondents
Industries Association, through
its Secretary.

Respondent Nos.5 to 7 having their
office at 5/A, New Timber Market,
Bhavani Peth, Pune-411 042.

(Copy for Respondent Nos.1 to 3

to be served on A.G.P. Writ Cell,
High Court (AS), Bombay)

Mr.Y.S.Jahagirdar, Senior Counsel i/by
Mr.G.S.Godbole for the petitioners.

Mr.S.R.Nargolkar, Assistant Government Pleader for
the respondent Nos.1 to 3.

Mr.R.G.Ketkar for the respondent Nos.4 and 6.

ALONGWITH

WRIT PETITION NO.9644 OF 2004

1. Tajuddin Mohammadbhai Somaji,
aged about 60 years,
Indian Inhabitant, residing
at 1, Nelor Road,
Pune 411 001.

2. Suyog Development Corporation,
Unit of Suyog Chambers, 335,
Shukrawar Peth, Bapu Gokhale
Road, Pune 411 002.

.. Petitioners

v/s.

1. The State of Maharashtra,
Mantralaya, Mumbai-400 032,
to be served to the office
of the Additional Government
Pleader, High Court (A.S.),
Mumbai.

2. The Pune Municipal Corporation,
Pune, through its Municipal
Commissioner, Pune.

3. The Assistant Engineer
(Development Plan), Pune
Municipal Corporation, Pune.

4. The Collector of Pune,
District Pune.

5. The Director of Town Planning,

Maharashtra State, Pune,
Through the Secretary, Urban
Development Department and
Public Works Department,
Mantralaya, Mumbai.

6. The President, The Pune Timber
Small Scale Industries Association,
5/A, New Timber Market,
Pune.

7. The President, The Pune Timber
Merchants and Saw Mill Owners
Association, 5/A, New Timber
Market, Pune.

.. Respondents

Mr.K.K.Singhvi, Senior Counsel i/by Mr.P.B.Shah for
the petitioners.

Mr.S.R.Nargolkar, Assistant Government Pleader for
the respondent Nos.1,4 and 5.

Mr.A.V.Anturkar i/by Mr.S.B.Deshmukh for the
respondent Nos.6 and 7.

Mr.R.G.Ketkar for the respondent Nos.2 and 3.

ALONGWITH

WRIT PETITION NO.5077 OF 2004

Pune Timber Merchant and
Saw Mill Owners Association,
5/A New Timber Market,
Registration No.MPC 31/1963,
Pune-411 042.

.. Petitioner

v/s.

1. The State of Maharashtra
(Summons to be served on the
Learned Additional Government
Pleader appearing for the
State of Maharashtra under
Order XXVII, Rule 4 of the
Code of Civil Procedure, 1908)

2. The Secretary,
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai-400 032.
(Summons to be served on the
learned Additional Government
Pleader appearing for the State
of Maharashtra under Order XXVII,
Rule 4 of the Code of Civil
Procedure, 1908).

3. Pune Municipal Corporation,
Shivajinagar,
Pune-411 005.
(summons to be served on the
Municipal Commissioner,
Pune Municipal Corporation,
Shivajinagar, Pune-411 005.)

.. Respondents

4. M/s.C.V.Shah and A.V.Bhat,
Shri Rajesh Chandrakant Shah,
office at AST-1, Success
Chambers, 1232, Apte Road Corner,
Deccan Gymkhana, Pune-411004.

1. Tajuddin Mohammadbhai Somaji,
Through P.A.Shri Bharat K.Shah,
R/o.T-400, Adinath Society,
Pune-Satara Road,
Pune-411 007.

2. Jayanat Hiralal Shah,
Partner, Suyog Development
Corporation, Unit No.10,
335, Shukrawarpath,
Pune-411 002.

..Respondents
(Intervenors)

(Added as per order dated
17.1.05 passed in C.A.
No.2796/2004 and C.A.
No.2797/2004.)

Mr.A.V.Anturkar i/by Mr.S.B.Deshmukh for the
petitioners.

Mr.S.R.Nargolkar, Assistant Government Pleader for
the respondent Nos.1 and 2.

Mr.R.G.Ketkar for the respondent No.3.

Mr.Y.S.Jahagirdar, senior counsel i/by
Mr.G.S.Godbole for the respondent Nos.4 to 6.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 29th April, 2005/
2nd May, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

The arguments advanced before us in this batch of three writ petitions have crystalised two issues for our determination. These issues are:

(i) Whether the designation of the land bearing survey Nos.577 Hissa No.1, 577 Hissa No.2, 577 Hissa No.3 and 578 Hissa No.1 (part) in the revised development of Pune City for the ‘timber industry’ is for the public purpose.

(ii) Whether the designation of the aforesaid land for the ‘timber industry’ in the revised development plan of Pune City notified on 5.1.1987 has lapsed under section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short, ‘the MRTP Act, 1966’) for want of any steps for acquisition of the said land within six months of the service of the purchase notice.

2. Bereft of unnecessary details, the aforesaid two issues arise in the facts and circumstances which we briefly state hereunder.

WRIT PETITION NO.7846 OF 2004

3. The petitioners in this writ petition claim to be the owners of the land comprising of survey No.577 Hissa No.1 and 578 Hissa No.1 (part), situate at village Munjeri, Taluka Haveli, District Pune. On 5.1.1987, the Government of Maharashtra published the revised development plan of Pune City under the provisions of the MRTP Act, 1966. The said plan provided for various reservations and designations. In the schedule of the development plan, these petitioners' land was shown in the zone designated for "Timber Industries". The Pune Municipal Corporation was shown as the Acquiring Authority. The total land shown in the zone designated for "Timber Industries" admeasures 21 Hectares comprising of survey Nos.577 (that includes 577 Hissa No.1, 577 Hissa No.2, 577 Hissa No.3), 578 Hissa No.1 (part), 579 (part) and 580 (part) situate at village Munjeri, Taluka Haveli, District Pune. Note 15 (wrongly shown as note 25) provides: "Steel Yard/Timber Industries Reservation to be converted into zoning for very purpose. Pune Municipal Corporation to acquire land if the Association of Steel and Scrap Merchants/Timber Merchants come forward for payment of acquisition costs." It

appears that the correspondence ensued between the authorities of the Pune Municipal Corporation and the Pune Merchant and Saw Mill Owners Association, the Pune Timber Small Scale Industries Association and the Pune Timber Small Scale Industries Co-operative Industrial Estate Limited from time to time regarding the mode of the acquisition of the designated land, the cost thereof and the amount to be deposited by these associations. It also appears that in the year 1988 a development agreement and thereafter a supplementary agreement were entered into between the present petitioners and the members of Pune Timber Industrial Association for development of the land owned by the petitioners admeasuring about 11 Hectares. As per the agreement, the present petitioners were to develop the land and sell the developed plots to the individual members of the Pune Timber Industrial Association at the rate fixed in the agreement. According to the petitioners, all these agreements were cancelled later on. On 15.11.2000, the petitioners through their advocate served a purchase notice under section 127 of the MRTP Act, 1966 on the Pune Municipal Corporation and its Commissioner in respect of their land comprising of survey Nos.577 Hissa No.1 and 578 Hissa No.1 (part), in all admeasuring about 74000 sq.mts. calling upon them

to acquire the land under the provisions of the Land Acquisition Act, 1894. The said purchase notice was replied by the Assistant Engineer, Land and Estates Department, Pune Municipal Corporation on 4.1.2001 and the petitioners were intimated that their purchase notice dated 15.11.2000 was rejected since the process of acquisition of the subject land was already in progress. The correspondence that ensued between the petitioners and the authorities of the Pune Municipal Corporation thereafter does not need reference in view of the limited controversy raised before us. The meetings between the petitioners, the authorities of Pune Municipal Corporation and the Timber Merchants Association were also held. There existed serious dispute about the cost of the land that was to be paid by the Timber Merchants Association for acquisition of the land designated for timber industries. Ultimately the State Government through Minister for Urban Development Department issued direction under section 37(1) of the MRTP Act, 1966 to the Pune Municipal Corporation on 6.2.2004 for commencing the process of deletion of the designated land admeasuring 21 hectares from the zoning of timber market and for notification of the said land in the residential zone. On 29.3.2004, the City Improvements Committee of Pune Municipal Corporation passed the resolution No.749

in the light of the directions issued by the State Government under section 37(1) of the MRTP Act, 1966 and it was resolved that the proposal for deletion should be forwarded to the General Body and the Commissioner should forward the proposal of cancellation of acquisition before the Standing Committee. The General Body of Pune Municipal Corporation passed a resolution No.33 unanimously on 20.5.2004 resolving that the Commissioner should submit the proposal to the Standing Committee for cancellation of the acquisition proceedings and for initiation of necessary procedure for deletion of the zoning/reservation of the timber market by recourse to the provisions of Section 37 of the MRTP Act, 1966. Then for the reasons best known, the State Government on 19.6.1994 by way of temporary measure stayed its earlier directions issued to the Pune Municipal Corporation on 6.2.2004. This necessitated the filing of the present writ petition.

WRIT PETITION NO.9644 OF 2004

4. The petitioners in this writ petition are owners of survey No.577 Hissa No.2 and Hissa No.3, situate at village Munjeri, Taluka Haveli, District Pune. This land too as noticed above is designated for

timber industry in the revised development plan of Pune City published on 5.1.1987. The petitioners' case is that on 14.6.2001, they served the purchase notice under section 127 of the MRTP Act, 1966 upon the Commissioner, Pune Municipal Corporation, Pune requesting the Planning Authority to acquire their aforesaid land but no steps were taken for the acquisition of their land within six months of the receipt of the said notice and, therefore, the designation of their land in the revised development plan of Pune City for 'timber industry' has lapsed. The other broad facts have already been noticed by us in the writ petition No.7846 of 2004.

5. In response to these two writ petitions 7846 of 2004 and 9644 of 2004, the Pune Municipal Corporation has filed separate reply affidavits. As a matter of fact in the reply to writ petition 9644 of 2004, the reply affidavit of writ petition 7846 of 2004 has been relied upon. The substance of the reply is that the Planning Authority had taken requisite steps as contemplated under section 127 of MRTP Act, 1966 even before the service of purchase notice i.e., the Pune Municipal Corporation had submitted the requisite proposal for acquisition on 31.5.1989 much before the receipt of purchase notice in both these matters.

Issue No.(i)

6. Section 22 of the MRTP Act, 1966 provides for contents of development plan. It reads thus-

"S.22. Contents of Development plan.- A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,

(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;

(b) proposals for designation of land for public purpose, such as schools colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious building and government and other public buildings as may from time to time be approved by the State Government.

(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature, reserves, sanctuaries and dairies;

(d) transport and communications, such as roads, high-ways, park-ways, railways, water-ways, canals and airports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value [and of heritage buildings and heritage precincts];

(j) proposals for flood control and prevention of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to requisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of law lying, swampy or unhealthy areas or levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and destiny of population allowed in a specified area, the use and purpose to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the

size of projections and advertisement signs
and boardings and other matters as may be
considered necessary for carrying out the
objects of this Act."

7. Clause (b) of section 22 refers to the provision of development of land for public purpose, interalia, 'markets'. In the development plan, the designation of the 21 Hectares of land including the subject land situated at village Munjeri is for 'Timber Industries'. The expression 'Timber Industries' seems to have been loosely used for the Timber Market. This becomes apparent from the fact that it is not part of Industrial Zone and it also clarifies that Timber Market at Bhavani Peth shall continue as Timber Market. Thus the designation of subject land for Timber Industry or in other words Timber Market is not excluded from clause (b) of section 22. Clause (b) of section 22 does not contemplate reservation only for Government markets or the markets of local authority as a public purpose. The designation of land for markets whether of the Government, local authority or private association of persons is covered by clause (b) and would be a public purpose.

8. Moreover, section 22(g) provides for proposals for designation of sites for service industries,

industrial estates and any other development on an extensive scale. The expression "any other development on an extensive scale" occurring in section 22(g) is of wide import and would take into fold the development of site such as for the purposes of timber industry. The development of 21 hectares of land for the timber industry is surely the development on an extensive scale. Merely because the cost of acquisition is to be borne by the Association of Timber Merchants, the purpose of development of the land for the timber industry shall not cease to be the public purpose. In this view of the matter, we are unable to agree with the contention of the learned senior counsel for the petitioners that the designation of the subject land in the revised development plan notified on 5.1.1987 is not for the public purpose. Pertinently under section 125 of the MRTPL Act, 1966, any land required, reserved or designated in a development plan for a public purpose or purposes including plans for any area of comprehensive development is deemed to be land needed for a public purpose within meaning of the Land Acquisition Act, 1894.

9. Besides that, it is too late in the day for the petitioners to challenge the designation of the

subject land in the development plan for public purpose. The MRTTP Act, 1966 provides for the detailed procedure to be followed from the date of the declaration of intention to prepare the development plan until publication of final development plan. At no stage, the petitioners raised the objection to the draft development plan and even thereafter no objections were raised by the petitioners within the reasonable time after the revised development plan was notified on 5.1.1987. In the writ petition filed in the year 2004, more than seventeen years after the publication of revised development plan, the grievance raised by the petitioners that the subject land designated for timber industry is not for public purpose does not deserve to be accepted even on the ground of the laches and unexplained delay.

10. The first issue, thus, is held against the petitioners.

Issue No.(ii)

11. The crucial question, now, is whether the designation contemplated on the subject lands for timber industry has lapsed under section 127 of the

MRTTP Act, 1966 for want of steps within six months from the date of the service of purchase notice under section 127. For considering these aspects, it will be proper to refer to the notice served by the petitioners in both the writ petitions separately.

12. In writ petition No.7846 of 2004 concerned, the following notice under section 127 of the MRTTP Act, 1966 was served upon the Pune Municipal Corporation/Commissioner, Pune Municipal Corporation.

"Dated the November 15, 2000

To,

The Commissioner,
Pune Municipal Corporation,
Mahapalika Bhawan,
Pune-411 005.

Pune Municipal Corporation
(A body Corporate established
under Bombay Provincial Municipal
Corporation Act, having its office
at Mahapalika Bhawan, Pune-411 005.

SUB: NOTICE UNDER SECTION 127 UNDER THE
MAHARASHTRA REGIONAL TOWN PLANNING
ACT.

Sir,

1. That the below mentioned property bearing survey No.578/1 (part) & 577/1 is situated at Munjeri Bibwewadi within the Pune Municipal Corporation area. bearing i

2. My clients M/s.C.V.SHAH AND A.V.BHAT.
1232 Success Chambers Apte Road
Corner Deccan Gymkhana, Pune-411 004
are the owner and vahivatdar of
abovesaid property. On behalf of my
client I am issuing this notice to
you.
3. As per the development plan an area
admeasuring 60309 sq.mtrs. out of
s.no.5701 & 13900 sq.mtres. of
s.no.577/1 is reserved for Timber
Industries.
4. That my clients have protected the
said area at their own cost by
fencing it and provided proper Gate
for the same.
5. My clients say that my client has no
objection to hand over the said lands
to you for the said purpose under
LAND ACQUISITION ACT and are ready to
accept the compensation as per
prevailing Govt.Recknor rate.
6. My clients says that this may be
treated as notice under section 127
of M.R.T.P.Act to acquire the said
property for the respective purpose
and if the Planning Authority fails
to acquire the land necessary
recourse under the M.R.T.P. Act will
automatically follow which please
kindly note which may include the
deletion of the said reservation and
for which the Plannng Authority i.e.
all of you will be responsible and
liable. This is for your information
and for the necessary action as
provided under the law."
13. In writ petition No.9644 of 2004, the purchase
notice is in Marathi and is dated 14.6.2001. The
English Translation of this notice has been placed
on record. The subject of the notice is for
acquisition of the property bearing survey
Nos.577/2 and 577/3 situate at Munjeri, designated

for timber industries. By means of this notice, the petitioners gave the proposal for acquisition of their land as referred to above. In the notice, it is stated that the purchase rate per square feet of the said land will be Rs.350/- and that the amount shall be paid by the Corporation within six months from the date of acceptance of the proposal and if it is not done, the interest of 24% per annum shall be charged. The land is as is where is basis. The notice also mentions that the proposal for acquisition is given by the petitioners without prejudice to their rights if the rates contained in the proposal are not found acceptable and if the transaction is not completed and the land is required to be acquired under the Land Acquisition Act then the proposal will be without prejudice to their legal rights. The notice also records that consent for acquisition of their land is being given at the instance of the Corporation. In the alternative, it is recorded that if the acquisition of the property is under the Land Acquisition Act, the proposal is without prejudice to their rights to claim the compensation at more rate than provided in the award.

14. The stand of Pune Municipal Corporation in reply affidavits in this regard is that the

Planning Authority had taken requisite steps as contemplated in section 127 of MRTP Act, 1966 much before the service of purchase notice.

15. The learned counsel for the respondents submitted that the notice dated 14.6.2001 in writ petition No.9644 of 2004 and the notice dated 15.11.2000 in writ petition No.7846 of 2004 are not legal and valid notice as contemplated in section 127 of the MRTP Act. They placed reliance on the expression "to that effect" occurring in section 127 and contended that the notice under section 127 mandatorily contemplates the specific mention of the aspects viz., (i) that the land is reserved, allotted or designated for the purposes specified in the development plan (ii) that such land has not been acquired by agreement within 10 years from the date on which the final regional plan or final development plan came into force and (iii) that the proceedings for the acquisition of such land under the MRTP Act or under the Land Acquisition Act has not commenced within 10 years from the date of coming into force of final regional plan/final development plan. The learned counsel for the respondents would submit that non-mentioning of these facts in the notice under section 127 would render the notice of no legal consequence. It was

also argued that in so far as writ petition No.9644 of 2004 is concerned, the notice is addressed to the Commissioner, Pune Municipal Corporation and such notice cannot be said to be notice to the Planning Authority.

16. Section 127 of the MRTP Act reads thus-

"S.127. Lapsing of reservations.- If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, (I of 1894) are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

17. The notice contemplated in section 127 is a notice requiring the Planning Authority or the Development Authority or the Appropriate Authority, as the case may be, to acquire the land which is reserved, allotted or designated for public purpose

in the final development plan. The notice is given by the owner or the person having interest in the land that is reserved, allotted or designated for the particular purpose in the development plan because such land has not been acquired by consent or no proceedings for acquisition have commenced under the MRTTP Act, 1966 or the Land Acquisition Act within 10 years of the coming into force of final development plan or final regional plan. The very fact that notice is given for acquisition or in other words for compulsory purchase by the owner or the person interested in such land would lead to show that the land is reserved, allotted or designated in the final development plan/final regional plan and that in respect of which no acquisition has taken place by agreement within 10 years from the date of coming into force of the final development plan or final regional plan or in respect of which the acquisition proceedings have not commenced either under the MRTTP Act or under the Land Acquisition Act. The expression "serve notice to that effect" cannot be construed to mean that in the notice it is mandatorily required to be stated that the subject land is reserved/designated/allotted in the development plan and that the land has not been acquired within 10 years from the date on which the

final regional plan or final development plan came into force or that no proceedings in relation to that land for acquisition has commenced either under the MRTTP Act or under the Land Acquisition Act within 10 years. The object of the notice under section 127 is to inform the Authority mentioned therein to acquire the land which is designated, reserved or allotted in the final development plan. The notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms. Form of notice under section 127 is not prescribed. In our view, therefore, the notice under section 127 shall meet the sufficient compliance if notice describes the land in sufficient clarity and requires the Planning Authority or the Development Authority or the appropriate authority, as the case may be to acquire or compulsorily purchase the land so reserved, allotted or designated in the development plan.

18. The expression "to that effect" means having

that result or implication. In section 127 after the expression "to that effect" there is semi colon (;) and it provides that if within six months from the date of service of such notice, the land is not acquired or no steps for acquisition are commenced, the reservation, allotment or designation shall be deemed to have lapsed. The result or implication of that notice is, thus, provided in section 127 and that is the lapsing of reservation.

19. We not advert to the purchase notices that are in issue. The notice in writ petition No.7846 of 2004 clearly gives description of the land. It mentions that such land is reserved in the development plan for timber industries and that the notice is under section 127 of the MRTPL Act to acquire the subject land for the respective purpose and if the Planning Authority fails to acquire the land within time prescribed thereunder, the consequences provided under that section would automatically follow. In the said notice, the Planning Authority is informed that the petitioners have no objection to hand over the land to the Planning Authority under the Land Acquisition Act for the purpose for which it is reserved/designated and that they are entitled to the compensation for acquisition of their land at the prevailing rate.

By no stretch of imagination the purchase notice dated 15.11.200 can be said to be invalid notice.

20. The subject of the notice in writ petition No.9644 of 2004, is the acquisition of the petitioners' property bearing survey Nos.577/2 and 577/3 situate at Munjeri (Bibwewadi) reserved for timber industries. It mentions that it is the proposal for the acquisition of the said property. It also states the rate at which the petitioners were ready and willing to deliver their land and that if for any reason the rate mentioned by the petitioners is not acceptable and question of acquisition of the property as per the provisions of the Land Acquisition Act arises, they would be entitled to the compensation at the rate admissible. We find no infirmity in the notice dated 14.6.2001. It is a notice for compulsory purchase. The notice meets the requirement of section 127 of the MRTP Act and cannot be said to suffer from want of requisite details.

21. The contention that the notice dated 14.6.2001 is addressed to the Commissioner, Pune Municipal Corporation, Pune and not to the Planning Authority and, therefore, not a legal notice is noted to be rejected. Section 136 of the MRTP Act, 1966

provides for the service of notice thus-

"S.136. Service of notice, etc.- (1) All documents including notices and orders required by this Act or any rule or regulation made thereunder to be served upon any person shall save as otherwise provided in this Act or rule or regulation, be deemed to be duly served-

(a) where the document is to be served on a Government department, railways, local authority, statutory authority, company, corporation, society or other body, if the document is addressed to the head of the Government department General Manager of the Railway, Secretary or Principal Officer of the local authority, authority, company, corporation, society or any other body at its principal, branch, local or registered office, as the case may be, and is either

(i) sent by registered post to such office; or

(ii) delivered at such office;

(b)

(c)

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed "the owner" or "the occupier", as the case may be, of that land or building (naming or describing that land or building) without further name or description and shall be deemed to be duly served.

(a) if the document so addressed is sent or delivered in accordance with clause (c) of sub-section (1); or

(b) if the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building.

(3)

(4)

(5)

(6)

22. Section 136 of the MRTP Act, 1966 provides, interalia, that any notice required under the MRTP Act may be served upon the Principal Officer of the local authority and if such notice is addressed to the Principal Officer of the local authority that shall be deemed to be duly served on the local authority. It is not in dispute that the Commissioner is the Principal Officer of the Municipal Corporation. The contention that the expression "any person" in section 136 does not include the Planning Authority is wholly fallacious. The expression "any person" is too wide and comprehensive and includes both natural and unnatural person. That would include the local authority is clear from clause (a) of sub-section (1) of section 136 itself. We may immediately notice here that the Planning Authority is defined as 'local authority' in section 2(19) and the 'local authority' in section 2(15) means, interalia, the Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949 (For short, 'BPMC Act'). That the Pune

Municipal Corporation is the Municipal Corporation constituted under the BPMC Act is not in doubt.

23. Moreover, section 152 of the MRTTP Act, 1966 also provides that the powers and functions of the Planning Authority shall interalia for the purposes of section 136 be exercised and performed in the case of Municipal Corporation by the Municipal Commissioner or such other officer as he may be appointed in this behalf. Thus, the notice contemplated in section 127 of the MRTTP Act, 1966 on the Planning Authority if served on its Principal Officer is a good service.

24. In the reply affidavits filed by the Pune Municipal Corporation, no objection has been raised about the legality and validity of the purchase notices. As a matter of fact, the Pune Municipal Corporation considered the aforesaid notices as legal and valid notices under section 127 of the MRTTP Act and rejected them on the ground that the said notices do not require to be acted upon as the process for acquisition had already begun much before the said notices were served.

25. We have, thus, no hesitation in holding that the notice dated 15.11.2000 in writ petition

No.7846 of 2004 and the notice dated 14.6.2001 in writ petition No.9644 of 2004 are valid notices as contemplated under section 127 of the MRTP Act.

26. Whether the steps for acquisition had already been taken by the Planning Authority before the purchase notice under section 127 was served upon the Planning Authority is the moot question that needs to be considered now.

27. In the light of the decision of this court in the case of Sangli Miraj and Kupwad City Municipal Corporation v. Balkrishna Haribhau Sawant and ors. AIR 1999 Bombay 390, it was not debated before us that if the steps had already been taken before service of purchase notice, further action by the Planning Authority is not necessary and in that event there would be no question of lapsing of reservation.

28. That the only step that the Planning Authority is required to take for initiating proceedings for compulsory acquisition of the land which is reserved for public purpose is making an application to the State Government is not in issue before us though this aspect is referred to the Full Bench.

29. The steps that have already been taken for compulsory acquisition of the subject land, before the service of purchase notice, according to the learned counsel for the respondents are: (i) that the Municipal Commissioner, Pune Municipal Corporation by communication dated 20.4.1989 addressed to the Municipal Secretary, Pune Municipal Corporation requested that the Standing Committee may accord sanction and authorise him to enter into agreement for acquisition of subject land; (ii) that the Standing Committee passed the Resolution in the meeting No.6 held on 25.4.1989 granting approval for acquisition of subject land and (iii) that on 31.5.1989, the requisite application for acquisition under Land Acquisition Act was made to the concerned Collector by the Assistant Municipal Commissioner, Pune Municipal Corporation.

30. Mr.K.K.Singhvi and Mr.Y.S.Jahagirdar, the learned senior counsel appearing for the petitioners, however, submitted that the steps for acquisition have to be taken by the Planning Authority and since the Planning Authority is a local authority, such decision could only be taken by the General Body of the Local Authority i.e.

Pune Municipal Corporation. According to them any decision taken by the Municipal Commissioner or for that matter by the Standing Committee for acquisition of the subject property is no decision in the eye of law by the Pune Municipal Corporation for acquiring the subject land and therefore, the application dated 31.5.1989 made by the Assistant Municipal Commissioner to the concerned Collector for acquisition of the subject land is unauthorised, incompetent and of no legal consequence.

31. If a statute provides an act to be done by a particular authority and in a particular manner, it should only be done by that authority and in that manner or not at all.

32. The communication dated 20.4.1989 sent by the Municipal Commissioner, Pune Municipal Corporation to the Municipal Secretary would show that by the said communication, the Municipal Commissioner desired the Standing Committee to accord sanction and authorise him to enter into the agreement for acquisition of the subject land and for implementation of the scheme. The communication dated 20.4.1989 does not show that the Municipal Commissioner had taken any decision for acquisition

of the subject land assuming that the Municipal Commissioner could take such decision on behalf of the Planning Authority. As a matter of fact, the Municipal Commissioner was of the view that it was the Standing Committee who could accord sanction and authorise him to enter into the agreement for acquisition of these lands.

33. Nothing could be shown by the learned counsel for the Pune Municipal Corporation that the Standing Committee had any role to play in authorising or granting sanction for acquisition of the subject land. At one point of time, Mr.R.G.Ketkar, the learned counsel for the Pune Municipal Corporation sought to place reliance upon section 73 of the BMC Act but later on during the course of arguments, he stated, and in our view rightly, that section 73 of the BMC Act has no relevance in the matter.

34. The learned counsel for the Pune Municipal Corporation strongly placed reliance on section 68 of the BMC Act in support of his submission that the powers, duties and functions of the Planning Authority viz., Municipal Corporation prescribed in the MRTP Act, 1966 can always be exercised by the Commissioner. He, accordingly, traced the

authority of the Commissioner or for that matter the Assistant Municipal Commissioner in making application dated 31.5.1989 to the Collector for acquisition of the subject lands under the Land Acquisition Act by relying upon section 68 of the BPMC Act.

35. Section 68 of the BPMC Act is thus:

"68. Commissioner to exercise powers and perform duties of Corporation under other laws.

(1) Any powers, duties and functions conferred or imposed upon or vested in the Corporation by any other law for the time being in force shall, subject to the provisions of such law and to such restrictions, limitations and conditions as the Corporation may impose, be exercised, performed or discharged by the Commissioner.

(2) The Commissioner may with the approval of the Standing Committee by order in writing, empower any municipal officer to exercise, perform or discharge any such power, duty or function under the control of the Commissioner and subject to his revision and to such conditions and limitations, if any, as he shall think fit to prescribe.

36. Sub-section (1) of section 68 of the BPMC Act, thus, provides that the functions of the Municipal Corporation prescribed in any other law may be performed by the Commissioner but subject to the provisions of such other law. MRTTP Act, 1966 is 'any other law' within the meaning of section 68.

By virtue of section 152 of the MRTTP Act, 1966, the Municipal Commissioner can exercise and perform the powers of the Municipal Corporation (Planning Authority) as are contained in sections 25, 43, 44, 45, 46, 49, 59, 53, 55, 56, 58, 89, 90, 107, 112, 126(1)(b), 135, 136 and 142. In other words, section 152 of the MRTTP Act, 1966 excludes the authority of Municipal Commissioner to perform the functions of the Planning Authority prescribed in section 127. In law, therefore, even with the aid of section 68 of the BPMC Act, the functions of the Planning Authority as provided in section 127 cannot be performed by the Municipal Commissioner.

37. Besides that, on facts in the present matter before us, the Municipal Commissioner has not exercised the functions of the Planning Authority as provided in section 127.

38. In our conclusion, therefore, the stand of the Pune Municipal Corporation that the steps were already taken prior to the service of the purchase notice is fallacious for more than one reason. For one, there is no decision by the Planning Authority or for that matter by the General Body of the Pune Municipal Corporation to acquire the subject land and send the proposal for acquisition of the

subject lands to the State Government. The other, communication dated 20.4.1989 from the Municipal Commissioner, Pune Municipal Corporation to the Municipal Secretary, does not reflect any decision by the Municipal Commissioner for acquisition of the subject land but rather it is for seeking approval of the Standing Committee. Then the Commissioner is not competent to exercise the functions of the Planning Authority prescribed in section 127 of the MRTD Act, 1966 even by virtue of section 68 of the BPMC Act. The resolution of the Standing Committee passed on 25.4.1989 is of no legal worth. Last but not the least, the letter dated 31.5.1989 of the Assistant Municipal Commissioner (Special), Pune Municipal Corporation addressed to the Collector, Land Acquisition Department, Pune for the acquisition of the subject land under the Land Acquisition Act is without any legal authority. The letter dated 31.5.1989 of the Assistant Municipal Commissioner addressed to the Collector, Land Acquisition Department, Pune is founded on the acquisition proposal approved by the Standing Committee on 25.4.1989 though the Standing Committee had no authority or competence in that regard. The letter dated 31.5.1989 sent by the Assistant Municipal Commissioner to the concerned Collector cannot be held to be an application by

the Planning Authority to the Collector for acquisition of the subject land for want of any legal authority to him in that regard. Section 68(2) of the BPMC Act does not improve the case as there is nothing on record to show that the Commissioner has empowered the Assistant Commissioner in this regard by written order after obtaining approval from the Standing Committee. Moreover what Commissioner himself cannot do even with the aid of section 68(1) of the BPMC Act, a fortiori, the Assistant Commissioner cannot do by virtue of section 68(2). The proposal dated 31.5.1989, thus, sent by the Assistant Municipal Commissioner to the Collector, Land Acquisition Department cannot be said to be lawful proposal by the Planning Authority to the State Government and for that matter, to the concerned Collector for the acquisition of the subject land.

39. We have, thus, no hesitation in holding that the communication dated 31.5.1989 by the Assistant Municipal Commissioner (Special), Pune Municipal Corporation to the Collector, Land Acquisition Department, Pune for acquisition of the subject land and issuance of notification under section 126(2) of the MRTP Act, 1966 and section 6 of the Land Acquisition Act is not a proposal by the

Planning Authority and not a step for acquisition as contemplated by section 127 of the MRTP Act, 1966.

40. Having held so, it has to be held that the designation of the subject land in the development plan of Pune Municipal Corporation has lapsed as the Planning Authority failed to take any steps for acquisition of the subject land either before the service of the purchase notice or within six months from the date of the service of the purchase notice.

4. Mr.A.V.Anturkar, the learned counsel for the petitioners in writ petition No.5077 of 2004 did not dispute the position that if designation/reservation of the subject land is held to have lapsed, writ petition No.5077 of 2004 has to fail.

42. Consequently, this batch of three writ petitions is disposed of by the following order:-

ORDER

- (i) Writ petition Nos.7846 of 2004 and 9644 of 2004 are partly allowed.

(ii) The designation of the subject land being Survey No.577, Hissa No.1, Survey No.577, Hissa No.2, Survey No.577, Hissa No.3 and Survey No.578, Hissa No.1 (Part) in revised Development Plan of Pune City notified on 5.1.1987 for 'Timber Industries' is declared to have lapsed under section 127 of the MRTP Act, 1966.

(iii) Writ petition No.5077 of 2004 is dismissed.

No costs.

(R.M.LODHA, J.)

(R.S.MOHITE, J.)